

GARDNER, CARTON & DOUGLAS

1301 K STREET, N.W.

SUITE 900, EAST TOWER

WRITER'S DIRECT DIAL NUMBER

WASHINGTON, D.C. 20005

CHICAGO, ILLINOIS

JOCELYN R. ROY
202-408-7139

(202) 408-7100

FAX: (202) 289-1504

INTERNET: gcdlawdc@gcd.com

August 14, 1997

RECEIVED

AUG 14 1997

DOCKET FILE COPY ORIGINAL

Hand Delivery

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

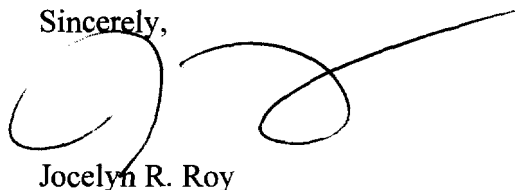
Re: PR Docket No. 92-257

Dear Mr. Caton:

Enclosed, on behalf of WJG MariTEL Corporation, are an original and four copies of its Petition for Reconsideration in response to the *Second Report and Order* in the above-referenced docket.

Should there be any questions in connection with this filing, please do not hesitate to contact the undersigned.

Sincerely,



Jocelyn R. Roy

Enclosures

No. of Copies rec'd
List ABCDE

024

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

AUG 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Amendment of the
Commission's Rules Concerning
Maritime Communications**

)
)
)
)
)

PR Docket No. 92-257

To: The Commission

**PETITION FOR RECONSIDERATION
OF WJG MARITEL**

WJG MariTEL Corporation ("MariTEL"), by its attorneys and pursuant to the provisions of Section 1.429 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"),^{1/} hereby submits a Petition for Reconsideration in response to the *Second Report and Order* ("Order") in the above-referenced proceeding in which the Commission adopted rules designed to promote operational, technical and regulatory flexibility in the Maritime Service.^{2/}

I. INTRODUCTION

MariTEL is the largest provider of public coast station services in the United States. Its stations cover most of the Coastal United States, in addition to the U.S. inland waterways, and consist of 146 transmitter locations each interconnected to MariTEL's control switching office located in Gulfport, Mississippi.

MariTEL applauds the Commission's efforts to reduce the regulatory burdens in the Maritime Service and to promote rules that will allow public coast station licensees to compete

^{1/} 47 C.F.R. § 1.429 (1997).

^{2/} *In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92-257, *Second Report and Order and Second Further Notice of Proposed Rule Making* (released June 26, 1997).

with other commercial mobile radio service (“CMRS”) providers. To date, public coast station licensees have been unable, due to regulatory impediments, to fully compete with other CMRS providers. MariTEL supports the Commission’s proposals in the *Second Further Notice of Proposed Rule Making* to, among other actions, license VHF public coast station spectrum, through competitive bidding, on a geographic area basis.

MariTEL urges the Commission to act expeditiously in adopting rules that will permit the licensing of public coast stations on this basis. MariTEL’s continuing inability to compete with other CMRS providers is damaging to its business, and represents a disservice to the boating public who are MariTEL’s customers. Maritime based consumers should have the same level of CMRS services available to them as do land based customers. Without Commission action, that parity cannot occur.

Nevertheless, while MariTEL urges the Commission to act expeditiously in creating parity between public coast station licensees and other CMRS providers, as the Commission is aware, public coast station licensees serve an important role in ensuring the safety of the boating public. Therefore, the FCC must strike a balance between these commercial and safety elements by providing VHF public coast station licensees with sufficient flexibility to compete with other CMRS providers, while continuing to require that public coast station operators fulfill their unique public safety obligations.

As described below, in two instances, the FCC has overlooked the need for VHF public coast station licensees to be responsive to the safety requirements of the boating public. In one other case, the FCC has not gone far enough to promote regulations that will make public coast station licensees competitive with other CMRS carriers. Accordingly, MariTEL is pleased to have the opportunity to submit this Petition for Reconsideration.

II. DISCUSSION

A. The Commission Should Require that an Operator be Available within a Licensee's System to Handle Emergency Situations

In the *Order* the Commission amended its rules to allow public coast station licensees the option to provide automatic interconnection with the public switched network ("PSN"). In connection with that change, the FCC eliminated the requirement that an FCC-licensed radio operator be present at the control point of each radiotelephone public coast station. Instead, the Commission will allow the licensee to decide whether or not to provide an operator.^{3/}

As noted above, VHF public coast station operators help ensure the safety of the boating public. VHF public coast station licensees are required to monitor channel 16 for distress calls.^{4/} While the *Order* proposes to relieve public coast station operators of this obligation by rule in instances where federal, state, or local authorities already maintain a continuous watch over 95 percent of a station's service area, that requirement is not yet lifted. The *Order* also proposes licensing over broad geographic areas. Therefore, even if a public coast station licensee is not required to maintain a safety watch in one part of its coverage area, it is unlikely to be relieved of that requirement throughout the entire coverage area.

Accordingly, even if a licensee offers interconnected service, which does not necessitate the use of a marine operator, there may still be instances in which a vessel may require the assistance of an operator to handle an emergency situation. Therefore, the Commission should reconsider its decision to allow public coast station licensees to choose whether to provide an operator at each radiotelephone control point. MariTEL agrees that, in an integrated, wide area system, it is unnecessary for a licensee to have an operator at every radiotelephone control point.

^{3/} *Order* at ¶ 14.
^{4/} 47 C.F.R. § 80.303

Such systems may be configured so that a boater in distress can reach an operator which is not necessarily located at the nearest control point, but who can nonetheless summon appropriate local authorities. Accordingly, in order to satisfy the safety requirements of the boating public and to nonetheless provide regulatory relief to public coast station operators, the Commission should require that the public coast station licensee post an operator at any point within its system so that a vessel may access the operator if it becomes necessary.^{5/} The amended rule would accomplish the Commission's objective of allowing public coast stations to compete with other CMRS providers,^{6/} while maintaining the public safety component synonymous with the Maritime Service. Attached, at Appendix A, is wording MariTEL proposes to accomplish these dual goals.

B. The Commission Should Require Public Coast Station Applicants and Licensees to Submit Plans Demonstrating How They Will Afford Priority to Maritime-Originating Communications

In order to increase operational flexibility and efficiency, the Commission will now allow VHF public coast stations, including Automated Marine Telecommunications Systems ("AMTS") Services, to serve both fixed and mobile units on land as long as the licensee gives priority to maritime communications. The Commission stated that the method for establishing priority may be achieved through any "appropriate electrical or mechanical means".^{7/} In addition, land units must be type accepted under Parts 80, 90 or 22 of the Rules and must have transmitter output power no greater than 25 watts.^{8/}

As noted above, public coast station licensees are obligated to provide services in support

^{5/} MariTEL does not propose that a licensed operator be present within the system, but only that an operator, capable of addressing emergency situations, be present.

^{6/} Order at ¶ 14.

^{7/} Order at ¶ 26.

^{8/} *Id.*

of safety of life and property at sea. While MariTEL is pleased to have the opportunity to serve fixed and mobile units, it certainly will not do so at the expense of its primary obligation to serve the maritime community. Accordingly, MariTEL suggests that the Commission require public coast station applicants desiring to serve land units, and existing licensees seeking to expand communications to land-based units, to submit a plan detailing the specific method by which priority to maritime communications is to be achieved. This requirement will not be burdensome to public coast station licensees who would only be required to outline the technical parameters of their existing or planned operations. Yet, it will allow the FCC to ensure that public coast station licensee who plan to offer service fixed or mobile units on land, have the capabilities to provide capacity on a priority basis to maritime communications. Proposed amendments to the regulations, embodying MartiTEL's suggestion, is contained at Exhibit A.

C. Maritime Mobile Sharing of Private Land Mobile Frequencies

In response to opposition from some commenters and the introduction of a narrowband channel and consolidation plan in the Private Land Mobile Radio ("PLMR") Service, the Commission declined to adopt rules to allow sharing of 400 kHz of PLMR spectrum between the Maritime Service and PLMR Service, instead deferring the issue until "a final decision concerning the introduction of market-based forces in the PLMR band [as a result of changes made in the PLMR refarming proceeding] is made."^{2/}

In the *Order*, the Commission notes that its proposal concerning maritime mobile/PLMR sharing was based on two premises: 1) certain channels allocated domestically to the PLMR are allocated internationally to the maritime services; and 2) few PLMR licensees were operating

^{2/} *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services*, PR Docket No. 92-235, *Report and Order and Further Notice of Proposed Rule Making*, 10 FCC Rcd 10096, *Second Report and Order* (released March 12, 1997).

from fixed locations with 80 km of the U.S. coastline. Both of these premises remain true. Neither of the reasons the Commission offers for its decision contradict the premises of the Commission's initial proposal. In order to promote a more robust VHF public coast service, the Commission must make available, consistent with international regulations, additional coast station channels. The FCC's "refarming" decisions need not interfere with the pursuit of this important goal.

The Commission cites three intervening factors in its decision not to permit maritime mobile/PLMR sharing. However, none of these factors stands as a true impediment to allowing public coast station licensees access to channels that are allocated on an international basis to maritime operators. First, the Commission states that a narrowband band plan has been introduced for the PLMR. Yet, the Commission can apply the same conditions on the "offset" channels it will now license as it proposed to impose on the "primary" PLMR channels covered by the original proposal. Second, the Commission noted that as a result of the consolidation of the PLMR "pools," additional entities (besides those eligible in the Motor Carrier and Railroad Radio Services) will be permitted access to the frequencies proposed for shared use. Finally, the Commission noted that it intends to evaluate the use of market forces to allocate spectrum in the PLMR. MariTEL recognizes that these latter two factors may have an impact on the availability of the shared maritime mobile/PLMR channels. However, the Commission should nevertheless proceed with the adoption of regulations providing for the shared domestic use of the channels and address licensing issues in subsequent phases of this and the "refarming" proceeding.^{10/}

^{10/} While MariTEL does not believe it necessary to fully explore, in the context of this Petition, how such sharing would occur, it envisions two alternatives: 1) if no rules allowing for marketplace forces to operate are adopted, the Commission can proceed in the same fashion as it originally envisioned, with a restriction on the use of the subject channels to entities eligible in the railroad and motor carrier services; or 2) if the Commission proceeds with the adoption of rules permitting the use of marketplace forces, it could divide geographically (using the proposed 16 km separation), with full incumbent licensee protection, the use of the spectrum between maritime mobile and PLMR operations.

III. CONCLUSION

MariTEL supports the Commission's desire to reduce regulatory burdens on maritime mobile licensees. However, the Commission also must ensure that public safety on the waterways is not compromised for the purpose of promoting telecommunications innovation and competition. Therefore, MariTEL requests that the Commission: 1) require that a licensed operator be available within a licensee's public coast station system to handle any emergency situations; 2) require that licensees and applicants provide a plan detailing the method by which they propose to give priority to maritime communications over land-based communications when serving land-based units; and 3) adopt rules allowing the sharing of PLMR spectrum and Maritime Service spectrum.

WHEREFORE, THE PREMISES CONSIDERED, WJG MariTEL submits the foregoing Petition for Reconsideration and urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

WJG MARITEL CORPORATION

By: 

Russell H. Fox

Jocelyn R. Roy

GARDNER, CARTON & DOUGLAS

1301 K Street, N.W.

Suite 900, East Tower

Washington, D.C. 20005

(202) 408-7100

Its Attorneys

Dated: August 14, 1997

APPENDIX A

1. Section 80.179 is amended by revising paragraph (d) as follows:

§80.179 Unattended Operation

* * * * *

(d) Automatic use of a transmitter when operating as part of the Automated Maritime Telecommunications System (AMTS), an automated multi-station system for which provisions are contained in this Part, or an automated public coast station or any individual automatic public coast station, so long as a ship station user can access an operator provided by the licensee of the public coast station.

2. Section 80.123(b) is revised to read as follows:

§80.123 Service to stations on land

* * * * *

(b) Each applicant for public coast station facilities wishing to serve stations on land must, as a part of its application for authorization, submit a plan demonstrating how it will afford priority to marine-originating communications through any appropriate electrical or mechanical means. Any existing public coast station licensee wishing to serve stations on land must provide such a plan to the Commission prior to commencing service to stations on land.